

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	DECLARATION OF
		BENJAMIN SILVERMAN
-against-	:	
EDWIN CORTORREAL,	:	17 Cr. 438 (VEC)
Defendant,	:	
-----X		

Benjamin Silverman, under penalty of perjury pursuant to 28 U.S.C. § 1746,
declares as follows:

1. With Jean Barrett, I represent Edwin Cortorreal in the above-captioned case. I make this Declaration in support of Edwin Cortorreal's Motion To Preclude the Government from Offering DNA Evidence from a Roll of Duct Tape.
2. Attached hereto as **Exhibit A** is the Certified Case File for the case identified by the Office of the Chief Medical Examiner (OCME) as FBS20-00663.
3. Attached hereto as **Exhibit B** is the Declaration of Dan Krane.
4. Attached hereto as **Exhibit C** is the Declaration of Nathaniel Adams and appendices thereto.
5. Attached hereto as **Exhibit D** is the High Sensitivity ID LCN DNA Amplification table including, on the bottom left and top right, the amplification data for "swab 1B from 'duct tape.'"
6. Attached hereto as **Exhibit E** are true and correct excerpts from OCME case file FBS06-01922.

7. Attached hereto as **Exhibit F** is a true and correct copy of the OCME validation study concerning “Estimating the number of contributors to two-, three-, and four-person mixtures containing DNA in high template and low template amounts.”

8. Attached hereto as **Exhibit G** is true and correct copy of a statement by the FBI’s DNA Casework Unit concerning, *inter alia*, the standards for uploading samples to its national Combined DNA Index System known as CODIS.

9. Attached hereto as **Exhibit H** is a true and correct copy of the Forensic Statistical Tool’s validation study.

10. Attached hereto as **Exhibit I** are true and correct excerpts from the testimony of Dr. Theresa Caragine, one of FST’s two architects, at an April 2, 2013 hearing in *People v. Peaks*, 789/2010 in the Supreme Court of the State of New York, County of Kings.

11. Attached hereto as **Exhibit J** are true and correct excerpts from the testimony of Dr. Adele Mitchell, the second of FST’s two primary architects, at a November 2017 *Daubert* hearing in *United States v. Jones*, 15 Cr. 153, before the Honorable Vernon S. Broderick. We can provide the full transcript to the Court if it would like to review it. It is also available on the Second Circuit’s electronic docket at *United States v. Jones*, No. 18-3800 (2d Cir. Aug. 2, 2019), Dkt. 110.

12. Attached hereto as **Exhibit K** are true and correct excerpts from the testimony of Dr. Craig O’Connor at the *Jones Daubert* hearing. We can provide the full transcript to the Court if it would like to review it. It is also available on the electronic Second Circuit docket at *United States v. Jones*, No. 18-3800 (2d Cir. Aug. 2, 2019), Dkt.

110.

13. Attached hereto as **Exhibit L** are true and correct excerpts from Dr. O'Connor's testimony at a *Frye* hearing held in Bergen County, New Jersey on May 30, 2018 in *State v. Rochat*, 13-07-1002. We can provide the full transcript to the Court if it would like to review it.

14. Attached hereto as **Exhibit M** is a true and correct copy of a 2007 OCME Laboratory Report concerning, *inter alia*, sample 1B from duct tape.

15. Attached hereto as **Exhibit N** is a true and correct copy of a discovery letter that we provided to the government on June 18, 2021. The government stated in an email on July 13, 2021, that it would respond to the requests in a "systematic way."

16. Attached hereto as **Exhibit O** is an article by David J. Balding titled, "Evaluation of mixed-source, low-template DNA profiles in forensic science."

17. Attached hereto as **Exhibit P** is an article by Nancy G. Leveson and Clark S. Turner titled, "An Investigation of Therac-25 Accidents."

18. Attached hereto as **Exhibit Q** is an article by Julia Gasston and others titled, "An examination of aspects of the probabilistic genotyping tool: Forensic Statistical Tool."

19. Attached hereto as **Exhibit R** is an article by Jeanna Matthews and others titled, "The Right To Confront Your Accusers: Opening the Black Box of Forensic Statistical Tool."

20. Attached hereto as **Exhibit S** is an article by Upulee Kanewala and others titled, "Testing Scientific Software: A Systematic Literature Review."

21. Attached as **Exhibit T** is an article titled, “DNA Commission of the International society for Forensic Genetics: Recommendations on the validation of software programs performing biostatistical calculations for forensic genetics applications.”

22. Attached hereto as **Exhibit U** is an article by Hinda Haned and others titled, “Validation of probabilistic genotyping software for use in forensic DNA casework: Definitions and illustrations.”

23. Attached hereto as **Exhibit V** is a true and correct copy of Dr. Dan Krane’s curriculum vitae.

24. Attached hereto as **Exhibit W** is a true and correct copy of Nathaniel Nathan’s curriculum vitae.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: August 6, 2021
New York, New York

By: /s/ Benjamin Silverman
Benjamin Silverman